THE HON'BLE MR JUSTICE K.C. BHANU

On Tuesday, the twentieth day of September

Two thousand and five..

W.P. NO. 16360 of 2003

R.V.V.S Prasad.

…….Petitioner.

And

Transmission Corporation of A.P., Ltd., represented by its Managing Director, Vidyut Soudha, Hyderabad and others.

……Respondents.

O R D E R:

This writ petition is filed by the petitioner for declaring the action of the respondents contained in the letter of the 2nd respondent dated 15.4.2003, in rejecting the case of the petitioner for regular appointment to the category of Sub Engineer according to the scheme contained in B.P.Ms.No.36 dated 18.5.1997, as illegal and further to direct the respondents to consider and appoint the petitioner as Sub Engineer.

2) Before adverting to the question as to whether the impugned action of the respondents contained in the letter of the 2nd respondent suffers from any legal infirmity requiring any interference as such by this Court, in exercise of its writ jurisdiction, it may be necessary, briefly, to note the relevant facts leading to the filing of this writ petition: The writ petitioner has been working as Contract

Labourer since 1.4.1994 in the office of the Divisional Electrical Engineer, Operation, Kakinada and the then respondents boarded a scheme for the contract labours to claim regular appointment. As a qualified candidate the petitioner had claimed the regular appointment to the category of Sub Engineer according to the scheme. Thereafter, the petitioner filed writ petition in W.P.12463 of 2002 against the respondents, seeking direction to the respondents to consider his case for regular appointment. Accordingly, this Court as per the orders by order dated 26.2.2003, in W.P.No.12463 of 2002, directed the respondents to consider the petitioner's claim on par with similarly situated persons viz., P.Ram Reddy, and G.V.V.Satyanarayana, for the appointment in the cadre of Sub Engineer within a period of six weeks. Thereafter, the 2nd respondent by its impugned action contained in the letter dated 15.4.2003 rejected the case on the ground that the service certificate produced by him at the time of interview is found to be not genuine. The ground of rejected was never taken when the writ petitioner filed W.P.No.12463 of 2002. The petitioner had submitted the service certificate showing the proof of having worked as contract labour at the time of interview on 16.6.1998. The claim of the petitioner was rejected altogether on the ground of which he was produced bogus service certificates. The writ petitioner further pleaded that his claim was rejected on the further ground that he had acquired Diploma qualification after the date of interview. Hence the writ petition for the relief sought.

3) Inter alia the respondents filed counter affidavit denying the contention of the writ petitioner. The respondents further contended that the petitioner had been working as contract labour since 11.4.1994 and on 16.6.1998 the petitioner was interviewed for the post of junior lineman and not for the post of Sub-Engineer as he had not acquired the requisite qualficiation for the post of Sub-Engineer and as per the directions of this Court, the respondents passed impugned order on 15.4.2003, which contains that the service certificates produced by the petitioner were not genuine and he would not work with two different contractors at the same duration of time and because the service certificates have not been brought on the same occasion. Then the respondents-department decided to refer the matter to vigilance wing to enquire into the matter. Hence the case of

the petitioner had not been considered for the appointment of Sub Engineer and the same was rejected on the ground of the service certificate produced by the petitioner is not genuine. Hence prayed to dismiss the writ petition.

4) The learned counsel appearing for the petitioner contended that the case of the petitioner was rejected on the ground that the service certificate produced by the petitioner is found to be not genuine but the said fact has not been taken as a ground on earlier occasion and therefore, this ground cannot be taken into consideration at this point of time and it amounts the *estoppel by judgment* and no notice was given to explain as to under which contractor he had worked and therefore, the action of the respondents in rejecting his case, which was not taken when the petitioner had filed a writ petition in W.P.No.12463 of 2002, is arbitrary and illegal and hence he prays to set aside the same.

5) On the other hand, the learned standing counsel for the respondents contended that the service certificates produced by the petitioner were not genuine and he would not have worked with two different contractors at the same time and because the service certificates have not been brought on the earlier occasion, the Department decided to refer the matter to vigilance wing to enquire into the matter. Hence the case of the petitioner has been considered and rejected on the ground of the service certificate produced by the petitioner is not genuine. Hence, there is no ground to interfere with the impugned proceedings.

6) Originally, the writ petitioner filed a writ petition in W.P.No.12463 of 2002, wherein claimed for regular appointment on par with similarly situated persons. This court by order dated 26.2.2003 directed to consider the case of the petitioner therein for appointment as Sub Engineer on par with the named two persons within a period of six weeks. Thereafter, the 2nd respondent by its impugned order dated 15.4.2003 rejected the case on the ground that the service certificate produced by him at the time of interview is found to be not genuine. The ground on which the claim of the petitioner rejected was never taken when the writ petitioner filed W.P.No.12463 of 2002. Therefore, the claim

of the petitioner was rejected altogether on the ground, which is now invented. It is stated that the service certificate showing proof of having worked as contract labour at the time of interview on 16.6.1998 and at that time his case was rejected on the ground that he had acquired Diploma qualification after the date of interview. On that aspect the learned counsel for the petitioner relied on the decision of the apex court in **Hope Plantations Ltd., vs. Taluk Land Board, Peermade and another**[1]**,** wherein it is held:

> "It is settled law that the principles of *estoppel* and *res judicata* are based on public policy and justice. Doctrine of *res judicata* is often treated as a branch of the law of *estoppel* though these two doctrines differ in some essential particulars. Rule of *res judicata* prevents the parties to a judicial determination from litigating the same question over again even though the determination may even be demonstratedly wrong. When the proceedings have attained finality, parties are bound by the judgment and are estopped from questioning it. They cannot litigate again on the same cause of action nor can they litigate any issue which was necessary for decision in the earlier litigation. These two aspects are "cause of action estoppel" and "issue estoppel". These two terms are of common law origin. Again, once an issue has been finally determined, parties cannot subsequently in the same suit advance arguments or adduce further evidence directed to showing that the issue was wrongly determined. Their only remedy is to approach the higher forum if available. The determination of the issue between the parties gives rise to, as noted above, an issue estoppel. It operates in any subsequent proceedings in the same suit in which the issue had been determined. It also operates in subsequent suits between the same parties in which the same issue ariss. Section 11 of the Code of Civil Procedure contains provisions of res judicata but these are not exhaustive of the general doctrine of res judicata. Legal principles of estoppel and res judicata are equally applicable in proceedings before administrative authorities as they are based on public policy and justice.
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> In *Arnold V. National Westminister Bank Plc* [(1991)2 AC 93] the House of Lords noticed the distinction between cause of action estoppel and issue estoppel. Cause of action estoppel arises where the cause of action in the later proceedings is identical to that in the earlier proceedings, the latter having been between the same parties or their privies and having involved the same subject-matter. In such a case, the bar is absolute in relation to all points decided unless fraud or collusion is alleged, such as to justify setting aside the earlier judgment. The discovery of new factual matter which could not have

been found out by reasonable diligence for use in the earlier proceedings does not, according to the law of England, prevent the latter from being reopened. Issue estoppel may arise where a particular issue forming a necessary ingredient in a case of action has been litigated and decided and in subsequent proceedings between the same parties involving a different cause of action to which the same issue is relevant, one of the parties seeks to reopen that issue. Here also bar is complete to re-litigation but its operation can be thwarted under certain circumstances."

7) There is no dispute about the proposition of law, but at the same time, it is required to be noticed in this case is that the petitioner produced the service certificates when he attended the interview on 16.6.1998, the same has not been referred to the vigilance department, but thereafter the department issued proceedings dated 11.4.2001 to all the Superintending Engineers to refer the cases where the service certificates produced by the contract labours to the vigilance wing and hence the respondents are justified in taking this ground, in view of the changed policy decision taken by the department by its proceedings dated 11.4.2001. By the time the case of the petitioner was rejected there was no such policy decision so as to refer all the service certificates produced by the candidates have be referred to the vigilance department for the purpose of enquiry. It is specifically stated that the service certificate produced by the petitioner was not counter signed by any officers of the department. One Pulla Rao, contractor has issued certificate stating that the petitioner worked as contract labour between 9.5.1997 to 18.5.1997 and 13.5.1997 to 20.5.1998. The petitioner also produced another certificate issued by B. Perraju stating that the petitioner worked as contract labour during 17.4.1997 to 16.8.1997 and therefore, the period is overlapping leading to the conclusion that the service certificates produced by the petitioner are bogus one. As the service certificates produced by the petitioner are not attested by any other officials, the respondents came to conclusion that the service certificates were found to be not genuine.

8) The scope of judicial review of administrative orders is rather limited. The

consideration is limited to the legality of decision-making process and not legality of the order per se. The test is to see whether there is any infirmity in the decision-making process and not in the decision itself. The satisfaction of the authority can be interfered with if the satisfaction recorded is demonstratively perverse based on no evidence, misreading of evidence or which a reasonable man could not form or that the person concerned was not given due opportunity resulting in prejudice.

9) The reason for the rejection of the case of the petitioner is that certificates produced by him were not genuine as per the vigilance report, there is some material on record to justify their action. Hence, it cannot be said that the reasoning of the respondents in the impugned proceedings cannot be said to be perverse. Since, it is not the case of *estoppel of judgment* in view of the fact that the policy decision as taken by the respondents, subsequently, the said ground, has not been taken on earlier occasion. There is no scope for the respondents to take the said ground on earlier occasion, in view of the fact that the respondents have not taken any decision to refer service certificate produced by the contractor to the vigilance wing, since it is a subsequent development, the order under challenge does not vitiate from any infirmities much less *estoppel by judgment.*

10) For the aforesaid reasons, the writ petition is devoid of merit and is dismissed. No order as to costs.

Justice K.C.BHANU.

20th September 2005.

BCS